IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE SEVENTH DAY OF APRIL
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE J.CHELAMESWAR

AND

THE HON'BLE MR JUSTICE GODA RAGHURAM

WRIT PETITION NO : 11865 of 2004

Between:

K.Harinadh, s/o Appalaswamy, 54 years,

Working as Forest Beat Officer, Edugurallapalli,

Bhadrachalam (S), Khammam District.

..... PETITIONER

AND

1. The Divisional Forest Officer,

Bhadrachalam (South), Bhadrachalam,

Khammam District.

2. The Conservator of Forests,

Khammam Circle, Khammam.

3. The Principal Chief Conservator of Forests,

AP, Aranya Bhavan, Hyderabad.

4. The Government of AP, rep. by its Principal

Secretary, Environment, Forests, Science & Technology

Department, Secretariat, Hyderabad.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a writ, order or direction more particularly one in the nature of Certiorari calling for the records relating to and in connection with the orders passed by the Hon'ble Andhra Pradesh Administrative Tribunal in TOA No. 2399 of 2002, dated 20-2-2004 and also the Memo issued by the 4th respondent in Memo No. 1702/For.V/2001-4, dated 31.12.2001 and the consequential proceedings issued by the 2nd respondent in Ref.No. 9666/2001/A1, dated 7.1.2002 in rejecting the claim of the petitioner for extending the benefits which were granted in respect of Mr. P.Odelu and Mr. B.Ganganna for appointing the petitioner as Forester on his acquiring 2nd rank in the Training School at Yellandu and to quash the same as highly arbitrary, illegal and violative of Articles 14, 16 and 21 of the Constitution and consequentially to direct the respondents to extend the same benefit which was extended in respect of the said persons appointing the petitioner as Forester with all consequential benefits.

For the Petitioner: Mr. P.V. Ramana, Advocate

For the Respondents : Government Pleader for Services-I

The Court Made the Following :

:: ORDER ::

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(Per Hon'ble Sri Justice Goda Raghuram)

Aggrieved by the dismissal of OA No. 2399 of 2002 by the A.P. Administrative Tribunal, the writ petition is filed.

The OA was filed aggrieved by the denial of the benefit of exemption from the provisions of the Note under Rule-5 of the A.P. Forest Subordinate Service Rules (for short 'the Rules'), to the petitioner as was granted to two similarly circumstanced individuals Mr. B.Ganganna and Mr. P.Odelu, Forest Guards and seeking extension of similar benefit in his favour.

The petitioner was initially appointed as a Forest Guard on 5.5.1977 to the AP Forest Subordinate Service. He was sent for Forest Guards Training at Yellendu during 1983-84. He obtained 2nd rank in the training with 71.1% of marks and the training certificate in first class. He also obtained three mementos in engineering, office procedure and accounts.

Mr. B.Ganganna was also recruited as a Forest Guard and sent for training at

Yellendu during 1984-85, whereat he obtained a 3rd rank. Ganganna also obtained a silver medal and sports championship. Another guard Mr. P.Odelu was deputed for Forest Guard training on recruitment as Forest Guard, during 1984-85 and obtained 2nd rank at the training.

Rule-2 of the Rules issued in G.O.Ms. No. 497, Forest, Animal Husbandry and Fisheries Department, dated 4.12.1986, provides for three methods of recruitment to the post of Forester. According to this rule, 50% of the posts are to be filled up by direct recruitment; 35% by promotion from Forest Guards and 15% by transfer from the members of the AP Ministerial Service, working in the Forest Department. The Note appended to Rule-5 is to the effect that a Forest Guard who stands first in the final examination in the Forest Guard Training at the AP School of Forestry, Yellendu, shall be eligible for promotion as Forester in preference to his seniors, if he is otherwise fit and qualified for promotion as Forester.

In January and February 1992, Forest Guards Mr. P.Odelu and Mr. B.Ganganna, respectively made representations that as certain Forest Guards who secured 2nd and 3rd ranks in the training were nevertheless promoted as Foresters earlier on a preferential basis disregarding the Note to Rule-5 of the Rules, they also be given similar benefit. The State Government thereupon in G.O.Ms Nos. 126 and 112, Energy, Forest, Environment, Science & Technology Department, dated 12.5.1992 and 27.4.1992 respectively, issued directions that Mr. P.Odelu and Mr. B.Ganganna be promoted as Foresters, if otherwise fit for promotion as Forester in relaxation of Note u/Rule 5 of the Rules, 'as a special case'.

It would appear that even in the higher categories of Forest Range Officers, persons who obtained Honours certificate and marks above 70% in Forest Range Officers Training at the College in Coimbattore, were treated as directly recruited Assistant Conservator of Forests and even persons who obtained 13th rank at such training were appointed as Assistant Conservator of Forests in violation of the provisions of the recruitment rules, by the orders issued by the State Government.

In the above circumstances the petitioner made a representation in 1995 for extension of similar benefit. Getting no response, he filed OA No.1107 of 2001 before the AP Administrative Tribunal. The OA was disposed of directing the respondents herein to pass appropriate orders. Pursuant to the orders of the

Tribunal above, the State Government by the order dated 31.12.2001 rejected the petitioner's representation recording that it has decided not to relax rules in individual cases in view of the orders issued in G.O. Ms. No. 509 General Administration (AR.TI) Department, dated 31.12.1999. Aggrieved thereby, the petitioner filed OA No. 2399 of 2002 before the AP Administrative Tribunal. In the OA the petitioner, *inter alia,* contended that the orders in G.O. Ms. No. 509, dated 31.12.99 have no application to him, that the administrative orders in G.O. Ms. No.509 cannot overawe the power available to the Government under the Rules to relax the rules and administrative instructions cannot over-ride the available statutory power of relaxation. He also claimed equal treatment with Mr. Odelu and Mr. Ganganna.

In rejecting the OA, the Tribunal held that while the petitioner had undergone Forest Guard training during 1983-84, the other two individuals (Mr. Odelu and Mr. Ganganna) were trainees of 1984-85 batch and as such the petitioner cannot claim to be similarly circumstanced, for equal treatment. As the two batches constitute two different and distinct classes differential treatment is legitimate, held the Tribunal. The Tribunal also held that as the Government had taken a policy decision in G.O. Ms. No. 509 not to relax the Rules in individual cases, such policy decision cannot be interfered with.

In G.O.Ms. No. 509 various administrative instructions were issued by the State Government relating to file management in the secretariat. *Inter alia*, the following decision was taken:

> *" Cases dealing with formulation of policy, changes in policy, deviation from the rules, existing policies or guidelines etc., should be circulated to the Minister concerned and the Hon'ble Chief Minister in accordance with the Business Rules. The general approach will be not to give relaxation in individual cases but to amend the Act or Rule or guidelines in cases of real hardship so that benefit accrues to all and not to a few individuals who approach for such relaxations."*

Paragraph-6 of the G.O. recorded that necessary amendment to the Business Rules/ Secretariat Instructions/ Secretariat Office Manual will be issued separately.

It requires to be noticed that in several cases, both prior and subsequent to G.O. Ms. No. 509, relaxations have been granted of various provisions of the general and special service rules in the various Departments, by the State Government. In many

cases even the substantive and special qualifications have been relaxed to confer favour even in undeserving cases effecting the merit and efficiency in various services. We wish to illustrate this fact by a reference to facts that came to the notice of this Bench in another writ petition WP No. 7435 of 2004. Three Town Planning Officers (Ordinary Grade) Sarvasri M.Narasimha Ramulu, D.Ramesh Babu and A.Prabhakar Rao, sought appointment as Assistant Directors of Town Planning in the vacancies meant for direct recruitment claiming possession of Post Graduation qualification in Town Planning and a long service. The State Government in G.O. Ms. No. 450, Municipal Administration and Urban Development Department, dated 1.10.2003 relaxed the statutory rules (Rules for Town Planning issued in G.O. Ms. No. 197 MA&UD Department, dated 25.3.92) and accorded permission to the Director of Town and Country Planning, Hyderabad, to appoint the said officers as Assistant Directors of Town Planning against unreserved vacancies under direct recruitment quota. Similar orders were also issued earlier in G.O. Ms. No. 485 MA&UD Department, dated 1.11.2002 in favour of one Mr. K. Purushotham Reddy, Town Planning Officer Special Grade to enable him to be absorbed as Assistant Director of Town Planning in a vacancy ear marked for direct recruitment.

A number of instances where orders of relaxation have indiscriminately been issued by the State Government without regard either to essential qualifications for holding the post as specified in the relevant recruitment rules or even in disregard to the integrity of the quota prescribed in the statutory rules for various feeder categories to the service, have come to the notice of this court in a succession of cases.

The so called policy spelt out in G.O.Ms. No. 509 is therefore seen to be observed by the State Government more in the breach of these guidelines. The rejection of the petitioner's case by the State Government (in memo dated 31.12.2001) on the basis of the orders in G.O. Ms. No.509, thus constitutes an irrational administrative order and could be characterised as a decision constituting hostile discrimination against the petitioner vis-a-vis similarly circumstances officers like Mr. Odelu and Mr. Ganganna.

The reasoning of the Tribunal that as Mr. Odelu and Mr. Ganganna are officers belonging to a subsequent (1984-85) batch of training, is patently misconceived, erroneous and unsustainable. The doctrine of classification which is a doctrine

evolved to truly effectuate the equality injunctions of Article 14 of the Constitution, requires that a classification to be valid must be based on reasonable differentia having a rational nexus with the objects sought to be achieved by the State action. The Note to Rule-5 of the Rules enables preferential treatment only to the first rank holder in the final examination in a Forest Guard Training at AP School of Forest Training, Yellendu, to render him eligible for preferential promotion as Forester vis-a-vis his seniors, if such candidate is otherwise qualified and fit for promotion as Forester. The administrative philosophy underlying the Note to Rule-5 of the Rules appears to be to provide an incentive to the most meritorious trainee in the category of Forest Guards. This legislative purpose was successfully subverted by the State Government by granting relaxation in favour of even officers who obtained rank 2 or even lower ranks, as is apparent from the orders issued in GO Ms Nos. 112 and 126 dated 27.4.92 and 12.5.92.

As the orders of the State Government dated 31.12.2001 rejecting the request of the petitioner contained no reasons explaining why similar treatment as in the case of Mr. Odelu and Mr. Ganganna could not be extended to the petitioner, on 5.10.2004 we directed the 4th respondent-State Government to file an affidavit setting out the reasons and circumstances justifying granting relaxation in favour of the other two officers.

The 4th respondent filed a counter affidavit dated 11.10.2004. Paragraphs 5 and 6 of this affidavit merely set out what is recorded in G.O. Ms. Nos 112 and 126 dated 27.4.92 and 12.5.92, in respect of the benefits given to Mr. Ganganna and Mr. Odelu. Respondent No.4 states that relaxation was granted in favour of those officers as a special case. In paragraph-9 it is stated that in view of the orders of the Government in GO Ms No. 509 and as the Note to Rule-5 of the Rules was deleted in the amendments to the Rules issued in GO Ms. No.88, dated 19.7.2000, no relaxation was granted to the petitioner, as there was no provision in the Rules. It is also pleaded that if the case of the writ petitioner is considered, it would open flood gates for other claimants. The counter affidavit is totally silent as to why and on what constraints or administrative justification, relaxation orders were granted to Mr. Odelu and Mr. Ganganna. Paragraph-10 of the counter affidavit merely reiterates that orders were issued in favour of the said officers ‘as a special case and on representations made by them’. It is also conceded that no steps have been taken to cancel the relaxation orders issued in favour of Mr. Odelu and Mr. Ganganna due to

efflux of time. It is pleaded by the 4th respondent in paragraph-11 of the counter affidavit dated 11.10.2004 that as the petitioner had for the first time approached the AP Administrative Tribunal in 2001 after a long lapse of 9 years (from the issuance of GO Ms Nos. 112 and 126), his case does not deserve to be considered.

As the counter affidavit does not throw any rational light on why relaxations were granted in favour of Mr. Odelu and Mr. Ganganna and denied to the petitioner, we called for the file relating to GO Ms Nos 112 and 126. On perusal of the relevant file we find that in the case of Mr. Odelu he made a representation dated 22.1.2002 for relaxation of the rules citing the instance of one Mr. P.Venkata Swami, Forest Guard, who was preferentially promoted as a Forester despite obtaining 2nd rank in the training. The Principal Chief Conservator of Forests recommended rejection of the request of Mr. Odelu, while pointing out that in some cases the Government had relaxed the rules to enable 2nd, 3rd and 4th rankers in the category of Foresters to obtain promotion as Forest Range Officers. The Deputy Secretary concerned had also recommended rejection of the request of Mr. Odelu. However, the Secretary to the Government concerned “strongly recommended” relaxation of rules in favour of Mr. Odelu on the ground that in G.O. No.311 dated 12.1.91 another Forest Guard Mr. Venkata Swami, who also secured 2nd rank with only 72% of marks was given relaxation and Mr. Odelu who obtained 75% marks should deserve equal treatment.

In the case of Mr. Ganganna, the said individual submitted a representation in February 1992, claiming that Sarvasri C.Viswanath, S.Appa Rao, Dhanjunjay Rao and Naseeruddin, Foresters who obtained 3rd and 4th ranks were deputed to Range Officers training on relaxation of rules and he should be accorded similar treatment. The Principal Chief Conservator of Forests recommended rejection of the representation of Mr. Ganganna, in his letter dated 21.3.92 stating that grant of such relaxation would make the really deserving people frustrated. In the note file it was clearly pointed out that while relaxation was granted in favour of Foresters as pointed out by Mr. Ganganna, no relaxation was earlier granted in favour of any Forest Guard to which category Mr. Ganganna belonged. The Deputy Secretary concerned pointed that Mr. Ganganna was a 3rd rank holder. However, relaxation was granted in GO Ms No.112. It requires to be noticed that the petitioner had made a representation as early as in 1995 to the Conservator of Forests, Khammam and to the Principal Chief Conservator of Forests, but without any response.

On the basis of the above material including the records relating to the relaxation orders granted in favour of Mr. Odelu and Mr. Ganganna, we are satisfied that the petitioner is similarly circumstanced as the said two officers. The petitioner having obtained 2nd rank in the Forest Guard Training was better placed than Mr. Ganganna, who secured a 3rd rank and equally entitled as Mr. Odelu for whatever benefits of relaxation that the Government had granted to the said two officers. However, in a clear transgression of the equality injunctions of the Constitution, the State Government had discriminated against the petitioner and singled him out for hostile discrimination vis-a-vis Mr. Odelu and Mr. Ganganna. The petitioner had made representations to the Conservator of Forests concerned as also to the Principal Chief Conservator of Forests as early as in 1995 duly citing the instances of Mr. Odelu and Mr. Ganganna. He followed the procedure of making his representations through proper channel. In view of the material apparent from the file relating to the relaxation orders granted to Mr. Odelu and Mr. Ganganna, it can reasonably be inferred that the office of the Principal Chief Conservator of Forests was aware that similarly circumstanced officers were granted relaxation of the rules. In such an event it was incumbent for the Principal Chief Conservator of Forests to have forwarded the representation of the petitioner also to the State Government. In fact in his letter dated 26.5.2001 the Principal Chief Conservator of Forests sent up proposals to the State Government duly pointing out the instances of relaxation granted in favour of Mr. Odelu and Mr. Ganganna. The note filed relating to the rejection orders of the petitioner's case reveal that at various intermediary levels ie., ASO, SO and other levels, the case of the petitioner was recommended for consideration on par with Mr. Odelu and Mr. Ganganna. However, the Hon. Minister for Forests and Environment had directed that the petitioner's case be examined in view of the orders issued in GO Ms No. 509. Thereupon a note was put up that in view of the orders in GO Ms No 509 and the orders in GO Ms No. 88 (amending the Rules and deleting the Note to Rule-5) action may be considered appropriately. Eventually a decision was taken to reject the petitioner's case in view of the orders in GO Ms No. 509.

It requires to be noticed that when the petitioner submitted a representation in 1995 for similar treatment as Mr. Odelu and Mr. Ganganna, the policy decision of the Government not to relax the Rules in individual cases i.e., GO Ms No. 509, dated 3.12.99, was not in place. Even otherwise there could be no policy in contravention

of the statutory power available under the general rules enabling relaxation of Rules in appropriate cases, a power specifically conferred on the State Government. The plea currently raised by the respondents that the Note to Rule-5 itself is deleted from the Rules by the amendment brought about by GO No.88, dated 19.7.2000, is also misconceived. The Note to Rule-5 enabled preference to be given only to the first rank holder. If that provision could have been relaxed even in respect of Forest Guards who had secured lower ranks, there is no reason why the absence of the Note to Rule-5 disabled grant of relaxation orders to the petitioner so as to extend him equal treatment. The delay in processing the file of the petitioner brought about this situation. The stand of the respondents in particular the State Government is therefore wholly unreasonable, arbitrary and unsustainable.

Normally in the factual matrix a Mandamus could issue to the respondents to consider relaxation of the relevant rules in favour of the petitioner so as to extend to him equal treatment as in the case of Mr. Odelu and Mr. Ganganna and other Foresters who were granted relaxation for promotion. However, such a direction would be subversive of public interest. Statutory rules prescribing qualifications or methods and source of recruitment for higher promotional opportunities signal the legislative concerns as to the needs of excellence and merit in public services. Relaxation of such statutory rule should be an exception requiring special justification in recorded reasons, justification that outweighs the general public interest involved in compliance with the statutory rules, which constitute the rule of law regime in a constitutional Republic. It must be noticed and recognised by the State Government that the power of relaxation conferred by the statutory rules is a public power exercised by the State and the State when called upon by the Judicial branch must be in a position to justify the exercise of power on the platform of public interest. The case on hand and the other illustrations adverted to above, reasonably permit the inference that the State Government has been oblivious of this constitutional requirement of accountability and probity in governance. Grant of relaxation in favour of the petitioner, of the provisions of the statutory rules, even if his case was considered at a point of time when the Note to Rule-5 was in operation, would lead to a subversion of the legislative intent underlying the statutory note viz., that only the most brilliant of the trainees i.e., the first ranker, should get preferential consideration for promotion as Foresters from the category of Forest Guard. The petitioner as a 2nd rank holder does not deserve such preferential

consideration. There would be no justification on empirical principle for grant of any such relaxation. This is apart from the fact that the petitioner has chosen to litigate by approaching the AP Administrative Tribunal for the first time in the year 2001. For the aforesaid reasons we are not persuaded to grant a Mandamus directing the respondents to consider relaxation of applicable rules in favour of the petitioner to enable his preferential promotion as Forester on par with Mr. Odelu and Mr. Ganganna.

However, from the facts adverted to above, as it is apparent that the petitioner has consciously been denied equal treatment by the State. As similarly circumstanced Mr. Odelu and Mr. Ganganna are seen to have been granted a special treatment by the State, denying similar and equal treatment to the petitioner, the petitioner's constitutional rights to equal treatment have been effected and for this violation of his constitutional rights the petitioner is entitled to be compensated for the constitutional injury suffered by him, though not by way of a direction to grant relaxation. In the circumstances while rejecting the petitioner's prayer for grant of a direction to the respondents to grant him relaxation of rules on par with Mr. Odelu and Mr. Ganganna, we direct the State Government to pay costs in an amount of Rs.5,000/- (Rupees Five thousands only) to the petitioner for violating his entrenched constitutional rights to equal treatment, in the area of exercise of the powers of relaxation. The State Government is at liberty to identify the person/persons responsible for the arbitrary exercise of the powers of relaxation, without principle and irrationally and to take appropriate administrative action as deemed fit and in accordance with the law.

The writ petition is accordingly disposed of with costs as above.

Date:07.04.2005 ----------

Pvsn Justice J.Chelameswar

Justice G.Raghuram

….. Registrar

To

1. The Divisional Forest Officer,

Bhadrachalam (South), Bhadrachalam,

Khammam District.

2. The Conservator of Forests,

Khammam Circle, Khammam.

3. The Principal Chief Conservator of Forests,

AP, Aranya Bhavan, Hyderabad.

4. The Principal Secretary, Environment, Forests, Science & Technology Department, Secretariat, Hyderabad.

5. Two CCs to the Government Pleader for Services-I, High Court Buildings, Hyderabad (OUT)

6. Two CD Copies